



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 08439-98

15 June 2000

LT [REDACTED] MSC USNR
[REDACTED]
[REDACTED]
[REDACTED]

Dear Lieutenant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 June 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 22 April, 26 May and 18 June 1999, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinions. Late submission of contested fitness reports not condoned, but the Board was unable to find this invalidated them. They noted your reporting seniors were not obligated to use the inputs you provided. Block 30 of the report for 1 February to 4 September 1996 indicates mid-term counseling was not performed, so the Board found this was not inconsistent with the block 41 statement that "Several informal counseling sessions were held..." While the general presiding over your nonjudicial punishment hearing may have commended you for your military achievements, this would not establish that you did not warrant the contested letter of reprimand. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is

important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY

BUREAU OF NAVAL PERSONNEL
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

IN REPLY REFER TO

1611
Ser 834C/606
22 Apr 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters, NPC-OOZCB

Subj: LT [REDACTED] MSC, U [REDACTED]

Ref: (a) BCNR memo 5420 Pers-00ZCB/NPC00ZCB of 25 Mar 99
(b) CG, 4th FSSG ltr 5812 SJA of 13 Jun 96
(c) SECNAVINST 5300.29A

Encl: (1) BCNR file 08439-98 w/service record

1. Reference (a) requested an advisory opinion in response to [REDACTED]'s request to remove reference (b) and two fitness reports from his officer permanent personnel record. Enclosure (1) is returned as a matter under the purview of BCNR.

2. [REDACTED] received nonjudicial punishment (NJP) on 13 Jun 96 for violation of the UCMJ, article 111. Specifically, [REDACTED] was determined to have controlled a vehicle aboard Little Rock (AR) Air Force Base while impaired by a 0.10 Blood Alcohol Content (BAC). Additionally, it was determined that [REDACTED] submitted to a BAC test only after being ordered to do so by Commanding General, Little Rock Air Force Base.

3. Reference (c) directs that all substantiated DUI/DWI offenses shall be documented in the officer fitness reports and other appropriate administrative records. As both [REDACTED] NJP and his initial refusal to take a BAC test meet the standard of a "substantiated DUI" per reference (c), the report of NJP was appropriately filed in [REDACTED] record. Accordingly, do not recommend the removal of reference (b) from [REDACTED] officer permanent personnel record or the reference to the NJP in his fitness report for the period 96FEB01 to 96SEP04.

4. No opinion can be made in regard to the other fitness report that [REDACTED] is requesting removal of as it deals with issues outside of NPC-83's cognizance.

[REDACTED]
[REDACTED]
Captain, U.S. Navy
Director

Personnel Performance & Security
Division

843998



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND

5720 INTEGRITY DRIVE

MILLINGTON TN 38055-0000

1610

PERS-311

26 May 1999

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: LT [REDACTED], MSC, USNR, [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness reports for the periods 1 February 1993 to 31 January 1994, 1 February 1996 to 04 September 1996, and a Punitive Letter of Reprimand.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the fitness reports for the periods in question to be on file, and the Punitive Letter of Reprimand. The fitness reports are signed by the member acknowledging the contents of each report and his rights to submit a statement. The member declined to sign the fitness report for the period 1 February 1993 to 31 January 1994 and no statement was ever received for that period. The member's statement and first endorsement for the fitness report for the period 1 February 1996 to 4 September 1996 are properly reflected in the member's record.


b. The member alleges the fitness reports to be retaliatory, unfair, and unjust treatment. In reviewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's action or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion; he or she must provide evidence to support the claim. I do not believe that [REDACTED] has done so. The fitness report itself represents the opinions of the reporting senior. Nothing provided in the petition shows that the reporting senior acted for illegal or improper purposes or that the report lacked rational support.

c. Whether the member was counseled or not, does not mean the fitness report is in error. However, the reporting senior states the member received several informal counseling sessions to correct deficiencies.

d. Further review of the member's record revealed a periodic regular fitness report for the period 5 May 1994 to 30 January 1995 missing from the member's record. If the member will forward a copy of the report we will file it in his digitized record.

e. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged. However, should PERS-61 determine the member's allegation of discrimination be found to have merit, we have no objection to removal of the reports as requested.

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Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY

**NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000**

8439-98

1610
PERS-61/066
18 Jun 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, Pers-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LIEUTENANT [REDACTED] USNR [REDACTED]

Ref: (a) BCNR PERS-00ZCB memo of 7 Jun 99
(b) OPNAVINST 5354.1D Navy EO Manual

Encl: (1) BCNR File 08439-98

1. Reference (a) requested an advisory opinion in response to Lieutenant [REDACTED] request to remove fitness reports for the periods 1 February 1993 to 31 January 1994, 1 February 1996 to 4 September 1996 and a Punitive Letter of Reprimand. Enclosure (1) is returned.

2. The fitness report of 1 February 1993 to 31 January 1994 represents the opinions of the commanding officer, although, it was signed 16 March 1994, one and a half months after the close of the reporting period. Lieutenant [REDACTED] requested Commanding General's Mast on 28 February 1994 in response that he had not received his fitness report nor an augmentation endorsement as he had requested. He then felt the grades on the fitness report to be retaliatory. I do not believe that he provides sufficient evidence that the grades were retaliatory. Although, I do believe he had a personality conflict with his chain of command.

3. Lieutenant [REDACTED] received a Punitive Letter of Reprimand on 13 June 1996 at Commanding Officer's NJP for having a BAC of .10 while trying to enter the main gate of an Air Force Base in Little Rock, Arkansas on 28 March 1996. He was also relieved of his primary duty for this incident. The fitness report of 1 February 1996 to 4 September 1996 documents this incident correctly.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LIEUTENANT [REDACTED] L, US [REDACTED]

4. It is my opinion that Lieutenant [REDACTED] has not been treated unjust or unfairly in accordance with reference (b). I recommend the fitness reports and Punitive Letter of Reprimand be retained.

[REDACTED]

Director, Professional
Relationships Division
(PERS-61)